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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION THREE

THE PEOPLE,

Plaintiff and Respondent,

v.

RICHARD L. WILSON,

Defendant and Appellant.

A116285

(San Francisco County
Super. Ct. No. 198676)

Defendant Richard L. Wilson appeals from a judgment imposing a three-year sentence following revocation of his probation at a contested hearing. Defendant's attorney has filed a brief pursuant to *People v. Wende* (1979) 25 Cal.3d 436, requesting our independent review of the record. Defendant has been advised of his right to file a supplemental brief and has not done so. We find no arguable issue and shall affirm.

BACKGROUND

On April 25, 2006, defendant was charged by felony complaint with one count of possession of cocaine base for sale (Health & Saf. Code, § 11351.5) with two allegations of prior convictions for drug offenses (Health & Saf. Code, § 11370, subds. (a) & (c)) and one allegation of a prior conviction under Penal Code section 1203.07, subdivision (a)(11). On May 8, 2006, defendant pleaded guilty to the charge of possession for sale, and the enhancement allegations were stricken. On May 30, 2006, the court suspended imposition of sentence and placed defendant on probation for three years, with credit for time served of 41 days. On August 2, 2006, the district attorney filed a motion to revoke

probation. The court administratively revoked probation and remanded defendant to the custody of the sheriff. At the revocation hearing on November 28, 2006, two police officers testified. One testified that on July 30, 2006, his partner informed him that he observed defendant selling what he suspected to be rock cocaine. When the arresting officer approached defendant a few minutes later, defendant “began to manipulate objects in his mouth, moving his mouth around. As I approached I ordered [defendant] to spit out what was inside of his mouth, and he complied and spat out 12 rocks wrapped in plastic twists.” The objects defendant spit out were later identified as cocaine base.

The court revoked probation and sentenced defendant to the low term of three years in prison. He was credited with 319 days for time served. Defendant timely filed a notice of appeal.

DISCUSSION

Penal Code section 1203.2, subdivision (a) provides that “[a]t any time during the probationary period of a person released on probation under the care of a probation officer pursuant to this chapter . . . if any probation officer or peace officer has probable cause to believe that the probationer is violating any term or condition of his or her probation or conditional sentence, the officer may, without warrant or other process and at any time until the final disposition of the case, rearrest the person and bring him or her before the court Upon such rearrest . . . the court may revoke and terminate such probation if the interests of justice so require and the court, in its judgment, has reason to believe from the report of the probation officer or otherwise that the person has violated any of the conditions of his or her probation, has . . . subsequently committed other offenses” Subdivision (c) authorizes the court to impose sentence on the underlying offense if imposition was previously suspended.

A condition of defendant’s probation was that he obey all laws. The arresting officer, who had observed “eight to nine” other drug sales at the time, and had previously arrested defendant for selling rock cocaine in the same location, saw defendant standing at that location. His partner observed as a man approached defendant and handed him money, and defendant “took the money and spat out a [suspected] rock of cocaine into his

hand and handed it to the other gentleman who walked away.” When the arresting officer approached defendant minutes after being informed what his partner had seen, he announced that he was a police officer and observed defendant begin moving his mouth in a chewing motion that he believed was an attempt to digest drugs. “Probable cause to arrest exists if facts known to the arresting officer would lead a person of ordinary care and prudence to believe and conscientiously entertain an honest and strong suspicion that the person is guilty of a crime.” (*People v. Guajardo* (1994) 23 Cal.App.4th 1738, 1742.) The circumstances that may contribute to probable cause for arrest for sale of drugs include “(1) the officer’s experience (which may render suspicious that which appears innocent to a layman); (2) the officer’s prior contacts with the suspect; (3) the officer’s awareness that the area is one known for street drug transactions; (4) the defendant’s conduct (such as a covert or secretive display, transfer or exchange); (5) a caching of an object given or received in a peculiar receptacle designed for a different, specialized purpose; (6) some indication by the defendant of a consciousness of guilt; and so on.” (*Ibid.*) In this case there was ample probable cause to support defendant’s arrest, including the officers’ direct observations indicating defendant was then engaged in illegal drug activity. As in *People v. Guardajo*, “it [became] clear that a person of ordinary care and prudence would conscientiously entertain an honest and strong suspicion that [defendant] was selling or at least furnishing narcotics.” (*Id.* at p. 1743.)

Likewise, the officers’ testimony provided sufficient evidence to support the finding that defendant had violated the terms of his probation. (See *People v. Rodriguez* (1990) 51 Cal.3d 437, 447 [“proof of facts supporting the revocation of probation pursuant to [Penal Code] section 1203.2(a) may be made by a preponderance of the evidence”].) Having adequate evidence before it that defendant violated the terms of his probation by selling narcotics, the trial court did not abuse its discretion by revoking his probation and imposing the low term of three years in prison on the original offense. (*People v. Hawkins* (1975) 44 Cal.App.3d 958, 968 [“There is no abuse of discretion in revoking probation if the record shows that the accused violated the terms and conditions of probation”].)

Defendant was at all times represented by counsel. We find in the record no issue warranting further briefing or consideration.

DISPOSITION

The judgment is affirmed.

Pollak, J.

We concur:

McGuiness, P. J.

Parrilli, J.